

EXHIBIT 3

Fenner, et al., v. News Corporation, et al.

No. 09-cv-9832 (LGS)

Kennedy Declaration, Exhibit 3

Approx. March 2008

Ikimulisa Livingston (“IL”): Hey, this is Kim for Zach.

Zachary Haberman (“ZH”): Kim.

IL: Hi there. Uhh, first off, we’re not getting the 911 tape.

ZH: So, it’s funny you bring that up, because looking at *The Daily News*’ website, it looks like they have so much more than you – than the four lines you gave Clemente [Lisi, the rewrite dedicated to help Livingston with the Bell Trial]. I mean they have a full rundown. Did they get that from the transcript?

IL: Uh, I don’t think there is – I don’t know if they got a transcript or not.

ZH: Were they taking better notes? ‘Cause they have – they have, I mean, they have like fifteen, twenty lines.

IL: Uh, well, um, well, you know, I took lots of notes, but, uh, I mean, I can go back over them and see if I can come up with some more stuff.

ZH: No, Kim, the point is that they are obviously looking at transcripts or something. They have a full detailed rundown of what happened.

IL: Well, I don’t know. I don’t know where that came from. It was only played in the courtroom that one time.

ZH: Right, but there’s a court reporter in there, right?

IL: Yes, it is. Yes, there is.

ZH: I’m going to assume it came from the transcript and that they are not writing shorthand.

IL: Okay, I did not buy the transcript. I do not know if she [Nicole Bode, *The Daily News*’ Queens courthouse reporter] did or not, but I didn’t buy it. Do you want me to buy it?

ZH: No, why would I want you to buy it when I can just see what’s on *The Daily News*? Here’s the problem, it’s that Col is going to see this in about four minutes and is going to freak the fuck out.

IL: I’m sorry?

ZH: Col is going to see this in about four minutes and freak the fuck out, and is going to go and ask Jesse what happened, and Jesse is going to go ask Michelle what happened, and she's going to ask me, and I'm going to have to tell her you gave Clemente four lines as opposed to – You know, we couldn't have been clearer how important – how important this transcript was.

IL: Um.

ZH: I understand they are not releasing it which – I don't understand why every other news organization in the city is freaking out and making them debate this objection now, while they have time. I can't understand that at all. I called your press office to find out if they were going to be prepared. You were in court and, you know, somebody had to call them to find out if they were going to be prepared to release it if this argument was made, and they're not. You know they are losing this case and they don't give a fuck, is the impression I am getting.

But what I care more about is – is exactly what I said to you two weeks ago: we are not going to be judged by the stuff we have, we're going to be judged by what we don't have. And, you know, while their story today was nothing incredible, it was still something we didn't know about, and this 911 stuff is the whole thing for today. This is it. I mean [Michael] Oliver's [one of the offices accused of shooting Sean Bell] line is good, but the thing about, you know, "I don't even remember shooting," but everyone's had that. I mean, in your notes, do you only have those four lines you gave to Clemente?

IL: Uh, I have to go back over and look and look at my notes for that.

ZH: It's your notes. You know if you have it or if you don't. Do you have fifteen twenty lines from this transcript?

IL: Uh, like I said I would have to go back over my notes and look at it.

ZH: I'm going to guess you don't, because you would've given it to him the first time, right?

IL: Uh, yeah I mean I don't

ZH: I'm not saying that you would purposefully hold something back from him. I don't think you would, so I am going to guess you didn't have it. I don't want you to go ahead and go buy this transcript right now, but I'd like you to take a look at their site and make sure that we can, you know, use, but, I don't want to use their stuff. But I want to be able to know what the hell is going on.

IL: Ok, the other thing is I wanted to let you know is Mallayev is in court tomorrow, and I think it's essentially just to – for him to show that he has, uh, you know, what his finances are in order to – whether or not he can continue getting a [unintelligible].

ZH: [unintelligible] All right, all right. That's actually not my [unintelligible] today at all, what I am worried about right now.

IL: All right. I just wanted to let you know. That as long as it's in the file.

ZH: I appreciate it. This is minor detail skirting the major issue here. Please go get what is on *The Daily News*' website.

IL: I'm sorry?

ZH: Please go get us what is on *The Daily News*' website.

IL: Well, I'll look back over my notes and get you –

ZH: Thank you, Kim